

a) **Authorities and Policies.** The cultural resources policy of the Omaha District is to preserve and protect significant cultural resources in a spirit of stewardship for the nation. As mentioned previously, inherent in this policy is the responsibility for locating, identifying, and evaluating cultural resources for their eligibility to the National Register of Historic Places. Once these cultural resources have been determined eligible for the National Register of Historic Places, it is our responsibility to preserve them in perpetuity or to mitigate them if they cannot be preserved. It is our goal to properly care for significant sites, stabilizing those sites threatened by erosion, mitigating those sites where stabilization is not an option, encouraging and enabling adaptive reuse of historic structures, and showcasing the historic and prehistoric sites on District lands, as appropriate. It is understood that laws and regulations are the primary elements that shape policy. Therefore this section stipulates the laws and regulations that pertain to cultural resources and provides a brief synopsis of the law or regulation. The laws and regulations are broken down into four sections; Public Law (including Uniform Standard Code and Code of Federal Regulation references), Executive Orders, Other Federal Guidance, and Corps of Engineers Regulations.

i) Public Law.

(1) Antiquities Act of 1906 – Public Law (P.L.) 59-209 16 Uniform Standard Code (U.S.C.) 431-433. Provides for protection of historic and prehistoric ruins and objects of antiquity, including paleontological resources on land owned or controlled by the Federal Government. The Act makes it a Federal offense to excavate, injure or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States. Requires that permits be issued to conduct archeological work on Federal land. Authorizes the President to declare historic and prehistoric landmarks as national monuments. Federal agencies are permitted to transfer objects of antiquity to properly qualified institutions. There are no compliance requirements for the Corps of Engineers under this Act. The permit required under the Archeological Resources Protection Act of 1979 has replaced the Antiquities Permit.

(2) Archeological Resources Protection Act of 1979, as amended - 16 U.S.C. 470 aa-mm. This Act establishes a method for Federal land managers to issue permits to conduct archeological work on Federal land, details who has custody of archaeological resources, establishes prohibited acts and criminal penalties, describes unauthorized activities, prohibits trafficking in archeological resources, provides for confidentiality of the nature and location of archeological resources, and provides Federal land managers with rules for the implementation of this Act (See also EC 405-1-71; Appendix I). The Omaha District is empowered to issue ARPA permits to state, other agency, and institutional archeologists who plan to conduct archeological investigations on Corps owned lands. This includes lands that are leased or permitted. An application form must accompany permit requests and a written proposal that provides the documentation specified in 32 CFR Parts 229.6 and 229.8. ARPA permits are obtained through the District Real Estate Division in coordination with other District elements in order to determine the availability of the land to be permitted. It is also

incumbent on Real Estate to identify and consult with any affected Native American tribes. ARPA permits are not required by Corps personnel acting in an official capacity, or by Corps contractors pursuant to contract requirements. The District is also able to more effectively prosecute apprehended looters under this act since criminal penalties are set forth. Criminal punishments under this act are similar in nature to the seizure procedures for drug trafficking violations. Besides the artifacts themselves, all the equipment and transportation means to get to the artifacts can also be seized; the screens, shovels, boats, trailers, and vehicles are subject to seizure under this act.

(3) Historic Sites Act of 1935 - P.L. 74-292 16 U.S.C. 461-467. Declared it a national policy to preserve for public use cultural resources of national significance and delegated primary responsibility to the Secretary of the Interior. The act authorizes interagency efforts to preserve historic resources, and it authorizes surveys of historic and archeological sites to determine which are significant. It also provides for restoration, reconstruction, rehabilitation, preservation, and maintenance of nationally significant historic and prehistoric properties. The Secretary of the Interior is authorized to conduct surveys and studies, collect information, and purchase significant historic properties, and to restore, preserve, maintain, and rehabilitate structures and sites. There are no specific compliance requirements stated in this act.

(4) The Reservoir Salvage Act of 1960 - P.S. 86-523 16 U.S.C. 469-469c, as amended by the Archaeological and Historic Preservation Act of 1974 - P.L. 93-291 16 U.S.C. 469. The intent of this Act is to make Federal actions responsive to the damage they will cause to scientific, prehistoric, historical and archeological resources. The Act provides a mechanism through which resources can be salvaged after a decision has been made to proceed with a project. Federal agencies are directed to notify the Secretary of the Interior (through State Historical Preservation Officers [SHPO's]) when a Federal project or activity may cause irreparable loss or destruction of significant resources or data. The act established a limit of 1 percent of total Federal appropriation for a project for agencies other than the Interior for mitigation of cultural resources, and identifies this as a federal cost. The one-percent limit on expenditures for cultural resources has since been rescinded. Compliance requirements are limited to notifying the Secretary of the Interior when a project will damage cultural resources. This is generally accomplished through the Section 106/110 and NEPA processes, but is not part of this Act.

(5) 16 U.S.C. 469-469c, Archeological and Historic Preservation Act of 1974. This Act is an amendment to the Reservoir Salvage Act. It states that when the Federal agency is provided with information that any alteration of the terrain caused as a result of any Federal construction project or Federally licensed activity or program will cause damage to a significant scientific, prehistoric, historic or archeological data, such agency shall notify the Secretary (*of the Interior*), in writing, concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or

activity, undertake such activities. Any time that ground-disturbing activities are anticipated, the Omaha District shall notify the Secretary of the Interior (in most cases, their designated representative, the SHPO) if the proposed action will cause damage to a significant site. The District can request that the Secretary of the Interior perform the recovery, protection, and preservation of the data, besides conducting the preliminary survey, but more often, project funds are used by the District to accomplish this task. This law is also called the Moss-Bennet Bill.

(6) P.L. 102-575, National Historic Preservation Act of 1966, as amended through 1992. The Act establishes preservation as a national policy and directs the Federal government to provide leadership in preserving, restoring and maintaining the historic and cultural environment of the nation. The Act authorizes the Secretary of the Interior to maintain a National Register of Historic Places, and establishes the Advisory Council on Historic Preservation (ACHP).

The 1980 amendments established guidelines for significant properties, curation of artifacts, data documentation of historic properties and preservation of Federally owned historic sites; required designation of a Preservation Officer in each Federal Agency; authorized the inclusion of historic preservation costs in project planning costs, and authorized the withholding of sensitive data on historic properties when necessary. Federal agencies are directed to maintain historic properties in ways that consider cultural values.

Section 106 directs Federal agencies to take into account the effect of a Federal undertaking on any district site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historical Places. Federal agencies must also provide the ACHP a reasonable opportunity to comment on each Federal undertaking.

Section 110 requires Federal agencies to assume responsibility for preservation of historic properties that are owned and controlled by agencies, and they are required to establish a program to locate, inventory and nominate all properties under the agencies ownership or control that are eligible for inclusion on the National Register. In the interim, agencies are to exercise caution to assure that significant properties are not inadvertently transferred, sold, demolished, substantially altered or allowed to deteriorate.

The Corps must be able to document compliance with the Act by including relevant coordination or consultation correspondence, study results, agency views and comments, and if required, mitigation plans in Corps project reports and NEPA documents. The Corps must prepare historic preservation plans for projects under its jurisdiction that discuss survey and evaluation strategies, costs, and schedules, and that establish management objectives for historic properties. The Act requires Federal agencies to develop and implement professional qualification standards for Federal employees and contractors. The Corps must ensure that tribal values are taken into account to the extent feasible. Native American groups are authorized to establish their

own culturally specific criteria of significance and develop their own Section 106 compliance process for resources on lands under their jurisdiction.

(7) 36 CFR Part 800, Protection of Historic and Cultural Properties. This regulation provides guidance on how to determine what kind of effect a Federal undertaking will have on a significant historic property. Once the effect is determined by an Agency official, in this case the Omaha District, in consultation with the SHPO or the Tribal Historic Preservation Officer (THPO), steps are taken to avoid or mitigate the significant historic property. District consultation with SHPO's, THPO's, and the ACHP are either recommended and/or required. This law was updated in 1999.

(8) 36 CFR 78, Waiver of Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act. Authorizes the Secretary of the Interior to "promulgate regulations under which the requirements in Section 110 may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security."

(9) 36 CFR Part 79, Curation of Federally Owned and Administered Archeological Collections. This regulation establishes definitions, standards, procedures, and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains. It addresses the management and preservation of collections, qualifications for curators, standards for curation facilities, funding for curatorial services, use and loan of collections, and periodic inspections and inventories. There are also templates in the appendices for an example of a deed or gift, a loan agreement, and a curation agreement. The District is responsible for having District artifacts curated at a federally approved repository, staffed by qualified curators. Any loans by these repositories require District review. Regular collection inspections and curation agreement reviews are also a District responsibility.

(10) 36 CFR Part 60 National Register of Historic Places. Nominations by States and Federal Agencies published in the Federal Register Vol. 41, No. 28, 10 February 1976 and 36 CFR Part 63, Determinations of Eligibility for Inclusion in the National Register. These two regulations establish the method by which States and Federal Agencies can nominate sites to the National Register of Historic Places or have them "Determined Eligible", a similar, but more expedient process for declaring that a site, building, structure, or object is significant and worthy of mitigation. In these regulations, either the State or the Federal Agency can nominate sites or determine them eligible for the National Register. Nominating criteria are set forth, as well as directions on how to complete the forms. The District is responsible for nominating sites on District lands that meet the National Register criteria.

(11) 42 U.S.C. 1996 and 1996a, American Indian Religious Freedom Act of 1978. On and after August 11, 1978, "it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession

of sacred objects, and the freedom to worship through ceremonials and traditional rites.” Under this law, the Omaha District must not limit access to religious sites, the possession and use of sacred objects, and the freedom to worship through special ceremonies and traditional rites. Federal agencies must make reasonable efforts to locate and coordinate with organizations and communities of groups covered by the act to insure that religious rights are accommodated during project planning, construction, and operation. Efforts must be documented in Corps project reports and NEPA documents.

(12) P.L. 100-298, Abandoned Shipwreck Act of 1987. Authorizes the United States to assert ownership over any abandoned shipwreck in State waters and submerged lands (lands beneath navigable waters). It provides guidelines for the designation of abandoned shipwrecks as nationally designated parks, areas, or sanctuaries. Federal protection is provided to any shipwreck that meets criteria for eligibility for inclusion in the National Register. Disposal of dredged or other material on or in the near vicinity of such wrecks is prohibited.

Corps reports and NEPA documents must show evidence of consultation with the SHPO's and the ACHP for significance and impact determinations and agreements about mitigation stipulations. Submerged resources are considered by the Corps under Section 106 of the National Historic Preservation Act (NHPA) and implementing regulations.

(13) 25 U.S.C. 3001-3013, Native American Graves Protection and Repatriation Act of 1990. This Act directs the Federal government to determine the cultural affiliation or lineal descendants to human skeletal remains from Federal land, and repatriate those remains, along with any grave goods or other items of cultural patrimony. It also provides a mechanism for notifying the various tribes of the items within the Federal collections, through announcements in the Federal Register. The Act also provides mechanisms for the intentional or unintentional exhumation of human skeletal remains. Under this Act, the Omaha District must conduct an inventory of collections of human remains and associated funerary items under their jurisdiction by the end of 1995 and consult with tribal governments regarding repatriation of existing collections. In cases where unanticipated covered resources are encountered during construction, Corps must cease undertakings or activities, in whole or in part, for at least 30 days, and make a reasonable effort to protect the items discovered.

(14) 43 CFR Part 10, Native American Graves Protection and Repatriation Act. This rule establishes definitions and procedures for lineal descendants, Indian tribes, Native Hawaiian organizations, museums, and Federal agencies to carry out the Native American Graves Protection Act, the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony. Besides the requirements in the Act itself, the rule provides guidelines for consultation, examples for notification in the Federal Register, lineal descent and cultural affiliation determinations, repatriation limitations and remedies, and dispute resolution.

The District is responsible for sending notifications to the National Park Service to be printed in the Federal Register and for consultation with the culturally affiliated tribe(s) with respect to the repatriation. The District is then responsible for repatriating the human remains, funerary objects, sacred objects, and objects of cultural patrimony.

(15) 18 U.S.C. 641, Theft of Government Property. This Act states that it is illegal to steal government property. The District is responsible for assuring that Federal property is not stolen.

(16) 36 CFR Part 65, National Historic Landmarks Program. This regulation sets forth the criteria for especially significant sites, elevated in importance from National Register or eligible sites. The National Historic Landmarks program is designed to highlight a type of site from each time period or phase that is particularly significant to the Nation's history or prehistory. It gives the Secretary of the Interior the responsibility for maintaining a database on the condition of each landmark, along with the responsibility for making recommendations when a landmark is endangered or threatened. The Omaha District is responsible for the preservation of the Landmark sites on District lands.

(17) 43 CFR 3, Preservation of American Antiquities. Designates specific agency jurisdictions over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objectives of antiquity. Also provides conditions for issuing permits for excavation.

(18) 36 CFR Part 61, Procedures for Approved State and Local Government Historic Preservation Programs. This regulation sets forth the guidelines for setting up state and local government historic preservation programs under the approval process of the Department of the Interior. Although the District does not have any specific responsibilities under this CFR, it does define the state and local preservation programs. The District works extensively with the state historic preservation staff under Section 106 of the National Historic Preservation Act of 1966, as amended.

(19) 43 CFR Part 7, Protection of Archeological Resources. The regulations in this part implement provisions of the Archeological Resources Protection Act of 1979 by establishing uniform definitions and uniform procedures to be followed in providing protection for archeological resources located on public lands and Indian lands in the United States. The four procedures detailed in this part are permits, civil penalties, provisions for preservation of collections and data, and provisions for ensuring confidentiality of information.

(20) 33 CFR 327, Part C, Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers. This rule provides protection for historic properties and public properties. This sub-part of the Regulatory Permit guidance runs counter to 36 CFR Part 800, the ACHP guidance for Section 106 of NHPA. It is in the District's best interest to follow 36 CFR Part 800, rather than the un-approved Corps counterpart regulation.

ii) Executive Orders.

(1) Executive Order 13007, Indian Sacred Sites. In managing Federal lands, each agency shall accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and avoid adversely affecting the physical integrity of such sacred sites, including maintaining confidentiality of the location of these sacred sites. Under this Executive Order, the Omaha District must accommodate access to and ceremonial use of Indian sacred sites by religious practitioners, keep the locations confidential, and avoid damaging or disturbing these sites.

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment. This EO directs the Federal Government to provide leadership in preserving, restoring and maintaining the historic and cultural environment of the nation. It also directs the heads of all Federal agencies to have all the sites on their lands located, inventoried, and nominated to the National Register of Historic Places by July 1, 1973. Caution is to be exercised in the interim period. This Executive Order requires the Omaha District to inventory District lands, nominate sites to the National Register of Historic Places by July 1, 1973, to exercise caution in the interim, and to provide leadership in preserving, restoring and maintaining the historic and cultural environment.

iii) Other Federal Guidance

(1) Dredging Guidance Letter No. 89-01, Policy and Procedures for the Conduct of Underwater Historic Resource Surveys for Maintenance Dredging and Disposal Activities. This guidance letter details the policy and procedures for underwater dredging as it applies to historic resources.

(2) Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act. Section 110 of the NHPA requires Federal agencies, in this case, the Omaha District, to assume responsibility for preservation, use historic properties, undertake preservation activities, locate, inventory, and nominate properties to the National Register, document historic properties adversely affected by Federal undertakings, designate a Federal Preservation Officer at the Washington level, in the case of the Corps, and train this person, carry out agency (e.g. Corps of Engineers) programs and projects consistent with the Act, review and approve plans to transfer surplus property to the Secretary, use Federal planning and actions to minimize harm to National Historic Landmarks affected by agency undertakings, establish eligible project costs, create a preservation awards program, continue to fulfill the requirement to comply with the National Environmental Policy Act, waive Section 110 during a national emergency or disaster, and protect the significant historic properties on their lands. Basically, this law states that the District is responsible for the preservation and protection of significant historic properties on District lands.

(3) The Secretary of Interior's Standards for Architectural and Engineering Documentation. This set of standards provides the guidelines for adequately documenting architectural and engineering structures that are going to be impacted by a Federal or Federally permitted or licensed undertaking. For example, should a proposed District regulatory permit activity involve tearing down a historic bridge, this set of standards provides the minimum requirements that must be met when creating the archival documentation for the bridge.

(4) The Secretary of the Interior's Proposed Historic Preservation Professional Qualification Standards. These proposed standards (48 FR (190) 44739) describe the recommended levels of education, experience, or a combination thereof for the compliance and historic preservation series. This set of standards provides the Omaha District with guidelines for hiring qualified staff and qualified contractors.

iv) Engineering Regulations.

(1) ER 1130-2-540, 15 Nov 96, Chapter 6, Cultural Resources Stewardship. This Engineering Regulation (ER) establishes the policy for the management and protection of cultural resources at operating civil works water resources projects for which the Corps of Engineers is responsible. It requires that the Corps Mandatory Center of Expertise (MCX) for Curation and Management of Archaeological Collections at St. Louis District manage Corps-wide curation needs assessments and design services for the curation of archaeological collections. Data and material from historic properties included in or eligible for the National Register of Historic Places that could be impacted by civil works undertakings will be investigated, evaluated, recovered and preserved. District commanders shall ensure that collections are available for scientific and educational uses by qualified professionals. Collections may also be loaned for religious uses by interested groups with a demonstrated affiliation to the materials in the collection. Requires that human skeletal materials not be placed on display or exhibited for public viewing in any fashion. Requires consultation with affected tribes, groups, or individuals regarding appropriate action for project effect upon sacred sites important to the practice of traditional Native American religion. Commanders are to ensure that Native Americans who are invited to participate by the Corps in consultation proceedings receive appropriate compensation for their activities. Provides that commanders ensure that a Cultural Resources Management Plan is developed for Corps projects. Requires that District Commanders (upon availability of funds) accomplish an inventory of historic properties and site evaluation at each water resource project. Requires that historic properties on fee owned lands be managed and maintained in a way that considers the preservation of archaeological, architectural and cultural values.

Historical preservation is an equal and integral component of resource management at operating civil works projects.

The ER also provides that commanders restrict access to associated records containing information related to nature, location, or character of a prehistoric or historic resource. The policy also states that, although not subject to civil or criminal penalties of ARPA, the collection of arrowheads or other artifacts from the surface of the land for private purposes without a permit shall be prohibited. Violators of protected properties shall be prosecuted.

(2) EP 1130-2-540, Chapter 6, Cultural Resources Management. This EP establishes guidance for the management of collecting, preserving and curating archeological and historic materials at Corps projects, as well as establishing a Historic Preservation Program for construction, operations, and maintenance activities at these locations. States that in carrying out the provisions of the law and policy, the Corps investigates, evaluates, and recovers data and material from historic properties that could be impacted by an undertaking. Collection use is subject to such terms as are necessary to protect and preserve the condition, integrity, and research potential of the collection. Collection users will be required to adhere to all rules established by the collections management center to protect the collection, and a written agreement is required. Provides methods for securing collections management services and/or transferring responsibility to another federal agency. Requires commanders to conduct and assessment of existing collections that are owned or controlled by the District, and a report to be prepared. Provides specific standards for collection management centers. Requires commanders to conduct an on-site inspection of collection management centers at least once every three years. Excludes paleontological resources from compliance with historic properties legislation, and cites them as being protected under other laws. Provides guidance for preparation of Feature Design Memoranda for major modification or new construction at civil works projects. Provides guidance for sites discovered during construction. Provides criteria for establishing historic program priorities. Provides guidance for preparation of Historic Properties Management Plans.

(3) ER 1105-2-50, draft 36 CFR 66, Appendix B and ACHP, Treatment of Archeological Properties: A Handbook. This ER provides standards and requirements for a variety of mitigation alternatives for significant sites.

(4) ER 1130-2-438 (Oct. 26, 1987) - Project Construction and Operation Historic Preservation Program. This regulation establishes the Historic Preservation Program for the Department of the Army, U.S. Corps of Engineers at Civil Works projects. The program provides overall guidance for construction, operation, and maintenance activities in relation to historic properties. The regulation states that these properties are to be given “just and equal” consideration along with other resources in the preparation of Master and Operational Plans. It furthermore directs all Districts to complete and inventory all project lands, and to mitigate adverse effects to significant cultural resources that result from Corps undertakings. It details actions and procedures to be followed whenever historic resources are discovered during a Corps undertaking, or whenever federally owned lands are exsessed. Importantly, ER 1130-2-

438 mandates the development of a Historic Properties Management Plan (HPMP) for each operational Corps project.

b) Memoranda of Agreement, Programmatic Agreements, and Curation Agreements. There are situations where additional agreements are authorized to clarify responsibilities, procedures, processes or requirements of the existing laws and regulations. The Omaha District has utilized the agreement mechanism to effectively implement our cultural resource responsibilities. Specifically there are Memoranda of Agreements (MOA), Programmatic Agreements (PA), and Curation Agreements (CA) that the District has implemented. Current versions of formal agreements that have been developed, signed and legally bind the District to specific cultural resource activities listed in the agreement are kept at the district offices. Contact the Cultural Resources Program Manager for a copy of these agreements.